



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

The Booth Revocable Family Trust
Attn: Richard and Karen Booth
57 Hummingbird Lane
Hillsborough, NH 03244

Re: Wetlands Bureau File # 2006-1480

**ADMINISTRATIVE ORDER
No. WD 06-032**

July 28, 2006

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division to Richard and Karen Booth pursuant to RSA 482-A. This Administrative Order is effective immediately upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly-constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, New Hampshire.
2. The Booth Revocable Family Trust is apparently a trust believed to own property in New Hampshire, having a mailing address of 57 Hummingbird Lane, Hillsborough, NH 03244. Richard and Karen Booth are co-trustees of the Trust.

C. STATEMENTS OF FACTS AND LAW

1. Pursuant to RSA 482-A, the Department of Environmental Services ("DES") regulates dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.
2. RSA 482-A:3, I states that "no person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without permit from [DES]."
3. RSA 482-A:14, III provides that "(f)ailure, neglect or refusal to comply with [RSA 482-A] or rules adopted under [that] chapter, or an order or condition of a permit issued under [RSA 482-A], and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by [RSA 482-A] shall be deemed violations of RSA 482-A."
4. The Booth Revocable Family Trust is apparently the owner of land located at 57 Hummingbird Lane in Hillsborough, more particularly described on the Hillsborough Tax Map as Map 17, Lot 210.

5. On June 21, 2006, DES received a complaint from the Emerald Lake Village District that Mr. Booth was constructing a retaining wall and raising the shoreline.
6. On June 21, 2006, DES personnel spoke with Mr. Booth and the contractor, Larry Conroy - L.A.B. Landscape & Bobcat Service, LLC, via a phone conversation to inform them of the complaint, request that they stop working, and to notify them that an inspector would be viewing the property.
7. On June 21, 2006, DES personnel conducted a site inspection of the Property. Mr. Booth was present at the site inspection. The following was observed:
 - a. A stone retaining wall had been installed in the bank of the lake. The wall was approximately 36 linear feet long and 2-3 feet high.
 - b. Three stairs were installed in the wall for lake access. The stairs were approximately 3 feet wide.
 - c. Fill had been placed behind the wall to raise the natural grade of the land.
 - d. A second landscaping wall was installed approximately 13 feet from the retaining wall on the shoreline.
 - e. A sign advertising L.A.B. Landscape & Bobcat Service LLC, was observed on the frontage.
8. A photograph provided by Richard Booth on June 21, 2006, showed that the natural shoreline consisted of randomly placed boulders, mowed lawn to the water's edge with sparsely spaced shrubs growing in between the boulders.
9. On June 21, 2006, DES requested that the Booths refrain from completing construction of the wall and immediately install erosion control to prevent water quality violations.
10. On June 22, 2006, DES received photo documentation that erosion controls had been installed.
11. Review of DES records show that in March of 2006 Larry Conroy, L.A.B. Landscape & Bobcat Service, LLC was involved in another enforcement case (Wetlands File #2006-371) which resulted in the issuance of a Letter of Deficiency to the owner, and which Mr. Conroy, as the contractor, submitted the restoration plan and completed the restoration.

D. DETERMINATION OF VIOLATIONS

1. The Booth Revocable Family Trust has violated RSA 482-A:3, I, by constructing a structure, namely a wall, in the bank of the lake without a permit from DES.

E. ORDER

Based on the above findings, DES hereby orders The Booth Revocable Family Trust as follows:

1. **Within 10 days of the date of this Order**, stabilize all exposed soil areas within 75 feet of the lake on the Property by utilizing erosion control blankets / matting or netting, installed per manufacturers specifications and submit photo documentation to DES showing that this has been completed.

2. **Within 45 days of the date of this Order**, submit a restoration plan to the DES Wetlands Bureau for review and approval. The restoration plan shall be prepared by a qualified environmental consultant, and include provisions for removal of the retaining wall, restoration of the bank to the original condition and vegetative stabilization of the graded soils on the Property. The following shall be submitted with the restoration plan:

- a. A plan with dimensions, drawn to scale, showing:
 - i. Existing conditions and jurisdictional impacts on the sites, with delineated jurisdictional wetland boundaries and land topography; and
 - ii. Proposed conditions after restoration of the jurisdictional areas;
- b. A detailed description of the proposed means of erosion control (silt fence, hay bales, etc.) and stabilization of the restoration area;
- c. A detailed description of the proposed planting plan utilizing native bank stabilizing shrub species and boulder placement along the shoreline of the lake;
- d. A detailed description of the permanent stabilization and revegetation of the exposed soils in the restoration areas;
- e. A description of the proposed construction sequence, equipment and methods for accomplishing restoration. All restoration shall be completed by **October 15, 2006**.
- f. A description of the method of documenting at least 75% survival of all vegetation planted during the restoration project. This should include at a minimum, an initial monitoring report documenting that restoration has been completed and monitoring progress reports for one successive growing season following completion of the restoration project. These reports should be submitted to DES on **October 15, 2006** and **October 15, 2007**, respectively.

3. Retain a qualified environmental consultant to supervise the implementation of the restoration and to submit the restoration progress reports prepared in accordance with Item E.2 above.

4. Implement the restoration plan proposed in accordance with Item E.2, above only after receiving written approval, and as conditioned, by DES.

5. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Darlene Forst, Shoreline Specialist, Wetlands Bureau
DES Water Division
P.O. Box 95
Concord, NH 03302-0095
Fax: (603) 271-6588
e-mail: dforst@des.state.nh.us

F. APPEAL

Any person aggrieved by this Order may request that DES reconsider the Order within 20 days of the date of the Order. The request for reconsideration must comply with Wt 203.01(d) (copy attached), and will be processed in accordance with Wt 203.01(e)-(j). Any party not satisfied with the decision on reconsideration may appeal to the Wetlands Council. Please note under RSA 482-A:10, II, the Council may not consider any ground that is not set forth in the request for reconsideration.

Filing an appeal or motion for reconsideration does not relieve The Booth Revocable Family Trust of the obligation to comply with the Order.


G. OTHER PROVISIONS

Please note that RSA 482-A:13 and RSA 482-A:14 provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. DES will continue to monitor The Booth Revocable Family Trust compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Hillsborough County Registry of Deeds so as to run with the land.



COPY
Harry T. Stewart, P.E. Director
Water Division



COPY
Michael P. Nolin, Commissioner
Department of Environmental Services

Certified Mail/RRR: 70001670000005854898

- cc: Public Information Officer, DES PIP Office
Jennifer Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
Darlene Forst, Wetlands Bureau
cc: Town of Hillsborough Selectmen and Conservation Committee
Gretchen Hamel, Legal Unit Administrator
Larry Conroy, L.A.B. Landscape & Bobcat Service, LLC